

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of R.T.R. and R.T.T.R., Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANDREA YVETTE WHITAKER,

Respondent-Appellant,

and

RODNEY TERRANCE ROBINSON, SR.,

Respondent.

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UNPUBLISHED  
February 18, 2003

No. 240937  
Wayne Circuit Court  
Family Division  
LC No. 99-378754

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to her children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).<sup>1</sup> We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner filed a supplemental petition seeking termination of respondent's parental rights on March 3, 2001. The permanent custody hearing was adjourned on several occasions on the trial court's own motion. Respondent moved to dismiss the petition on the ground that the permanent custody hearing had not commenced within sixty-three days after the petition was filed as required by MCR 5.974(F)(1)(b).<sup>2</sup> The trial court denied the motion, noting that the court rule did not mandate dismissal if the time limits were not met.

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<sup>1</sup> The trial court's order also terminated the parental rights of respondent Rodney Terrance Robinson, Sr., the children's father. Robinson has not appealed the order.

<sup>2</sup> MCR 5.974(F)(1)(b) provides that the permanent custody hearing must be held within forty-two days after the termination petition is filed. The trial court may, for good cause shown,  
(continued...)

We review a trial court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.*, 356-357.

Respondent argues that the trial court erred by denying her motion to dismiss. We disagree. Initially, we note that a trial court's decision to dismiss an action is reviewed for an abuse of discretion. *Nippa v Botsford General Hosp*, 251 Mich App 664, 667; 651 NW2d 103 (2002). Failure to follow the time requirements set out in MCR 5.974(F) does not mandate dismissal of a termination petition. MCR 5.974(F) does not specify a sanction for violation of the time requirements. This Court should decline to impose sanctions that our Supreme Court has declined to impose. *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993). Here, the delay between the filing of the termination petition and the commencement of the permanent custody hearing afforded respondent a further opportunity to comply with the parent-agency agreement. The trial court's refusal to preclude testimony regarding respondent's activities after the petition was filed had the same effect. Respondent has not demonstrated prejudice. No abuse of discretion occurred.

The trial court did not clearly err in finding that petitioner established by clear and convincing evidence the existence of one or more statutory grounds for the termination of respondent's parental rights. The evidence showed that respondent's children were removed from her custody in large part because she had an ongoing substance abuse problem. Respondent attempted without success to address that problem, and did not otherwise substantially comply with the parent-agency agreement. Respondent did not provide verification of suitable housing or a legal source of income. She visited the children only sporadically. Her circumstances at the time of the permanent custody hearing were essentially unchanged from the time the children were removed from her custody. The trial court did not clearly err in finding that termination of respondent's parental rights was warranted on the grounds that the conditions of adjudication continued to exist and were not likely to be rectified within a reasonable time, MCL 712A.19b(3)(c)(i), that respondent failed to provide proper care or custody, MCL 712A.19b(3)(g), and that it was reasonably likely that the children would be harmed if they were returned to respondent's custody, MCL 712A.19b(3)(j). The evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra*.

Affirmed.

/s/ Peter D. O'Connell  
/s/ E. Thomas Fitzgerald  
/s/ Christopher M. Murray

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(...continued)

extend the time for an additional twenty-one days.